IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.878 OF 2004

1. Suresh Dattatraya Patil and anr .. Petitioners

Vs

Somnath Agnuram Gupta, Respondent

Ms Gauri Godse, for the petitioners.

Mr M.S.Lagu, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 23rd September, 2004.

PC:

1. Heard the learned counsel for the parties.

2. This petition challenges the order dated 13.7.2001 rendered by the learned Jt.Civil Judge, J.D, Kalyan below Exhibit-33 in R.C.S.No.291 of 1987, by which the application Exhibit-33 filed by the respondent-defendant seeking amendment to the written statement, has been allowed.

3. I have perused the impugned order and the other material placed before me. Ms Godse, learned counsel for the petitioners, submits that in the earlier round of litigation, the respondent-defendant had lost upto High Court in which he had sought declaration that he is a tenant in the suit property and in view thereof now he cannot contend that he is in possession of the property

as tenant and, therefore, the amendment application ought to have been rejected. She placed reliance on the judgment of the Apex Court in Patasibai and ors Vs. Ratanlal, (1990) 2 Supreme Court Cases 42. By way of amendment, the respondent-defendant claims that he is in possession of the suit premises as tenant. Considering the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India and that the petition is directed against the order allowing the amendment, I am not inclined to interfere with the impugned order. The petition, therefore, fails and is dismissed as such.

4. The learned Judge, however, while framing the issue, shall take into account the findings recorded in the earlier round of litigation in which the respondent-defendant had sought declaration that he is a tenant in the suit premises and the observations made by the Apex Court in the aforesaid judgment. However, let me make it clear that I have not examined the merits of the contentions urged by Ms. Godse, learned counsel for the petitioners. The trial Court shall endeavour to dispose of the suit as expeditiously as possible and preferably within a period of nine months from the date of receipt of this order. . The petitioners to communicate this order to within two weeks from today.

(D.B.BHOSALE, J.)